

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JAMES HOWARD KEARNS,

Petitioner,

vs.

**Civil Action No. 2:06 CV 58
(Maxwell)**

THOMAS McBRIDE, Warden,

Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on June 9, 2006, with the filing of a Petition Under 28 U.S.C. § 2254 For Writ Of *Habeas Corpus* By A Person In State Custody (Docket No. 1) by the Petitioner, a state prisoner proceeding *pro se*, who seeks to pursue his remedies in this *habeas corpus* action pursuant to 28 U.S.C. § 2254.

It will further be remembered that on June 9, 2006, the Petitioner filed an Application To Proceed *In Forma Pauperis* And Affidavit; a Motion For Leave To Proceed *In Forma Pauperis* [28 USC 1915]; and a Prisoner Trust Account Report with attached ledger sheets (Docket No. 2).

It will further be remembered that, in accordance with Rule 83.13 of the Local Rules of Prisoner Litigation Procedure, the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation.

Because the Petitioner failed to submit a Consent to Collection of Fees, he was given twenty days to do so, by Order entered by United States Magistrate Judge John S.

Kaull on June 26, 2006. In compliance with Magistrate Judge Kaull's June 26, 2006, Order, the Petitioner filed a Consent To Collection of Fees from Trust Account on July 10, 2006 (Docket No. 9).

On July 19, 2006, United States Magistrate Judge John S. Kaull filed a Report And Recommendation That Application To Proceed Without Prepayment Of Fees Be Denied (See Docket No. 10), wherein he recommended that the Petitioner's request to proceed without prepayment of fees be denied and that he be ordered to pay the \$5.00 filing fee.

Magistrate Judge Kaull's July 19, 2006, Report And Recommendation That Application To Proceed Without Prepayment Of Fees Be Denied expressly advised the Petitioner, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Report And Recommendation within ten (10) days after being served with a copy of the same. The Court's review of the docket in the above-styled *habeas corpus* action has revealed that no objections to said July 19, 2006, Report And Recommendation That Application To Proceed Without Prepayment Of Fees Be Denied have been filed by the Petitioner; that the filing fee was, in fact, paid on July 26, 2006; and that this matter is now ripe for review.

Upon an independent *de novo* consideration of the issues raised by the Petitioner's Application To Proceed *In Forma Pauperis* And Affidavit, the Court is of the opinion that Magistrate Judge Kaull's July 19, 2006, Report And Recommendation That Application To Proceed Without Prepayment Of Fees Be Denied accurately reflects the law applicable to the issues raised by the Petitioner's Application To Proceed *In Forma Pauperis*. Accordingly, it is

ORDERED that the Report And Recommendation That Application To Proceed Without Prepayment Of Fees Be Denied filed by United States Magistrate Judge John S. Kaul on July 19, 2006 (Docket No. 10), be, and the same is hereby, **ACCEPTED** in whole. Accordingly, it is

ORDERED that the Petitioner's Application To Proceed *In Forma Pauperis* And Affidavit (Docket No. 2), be, and the same is hereby, **DENIED**.

It is further

ORDERED that the Clerk of Court shall send a copy of this Order to the *pro se* Petitioner.

ENTER: August 23, 2006

/S/ Robert E. Maxwell
United States District Judge